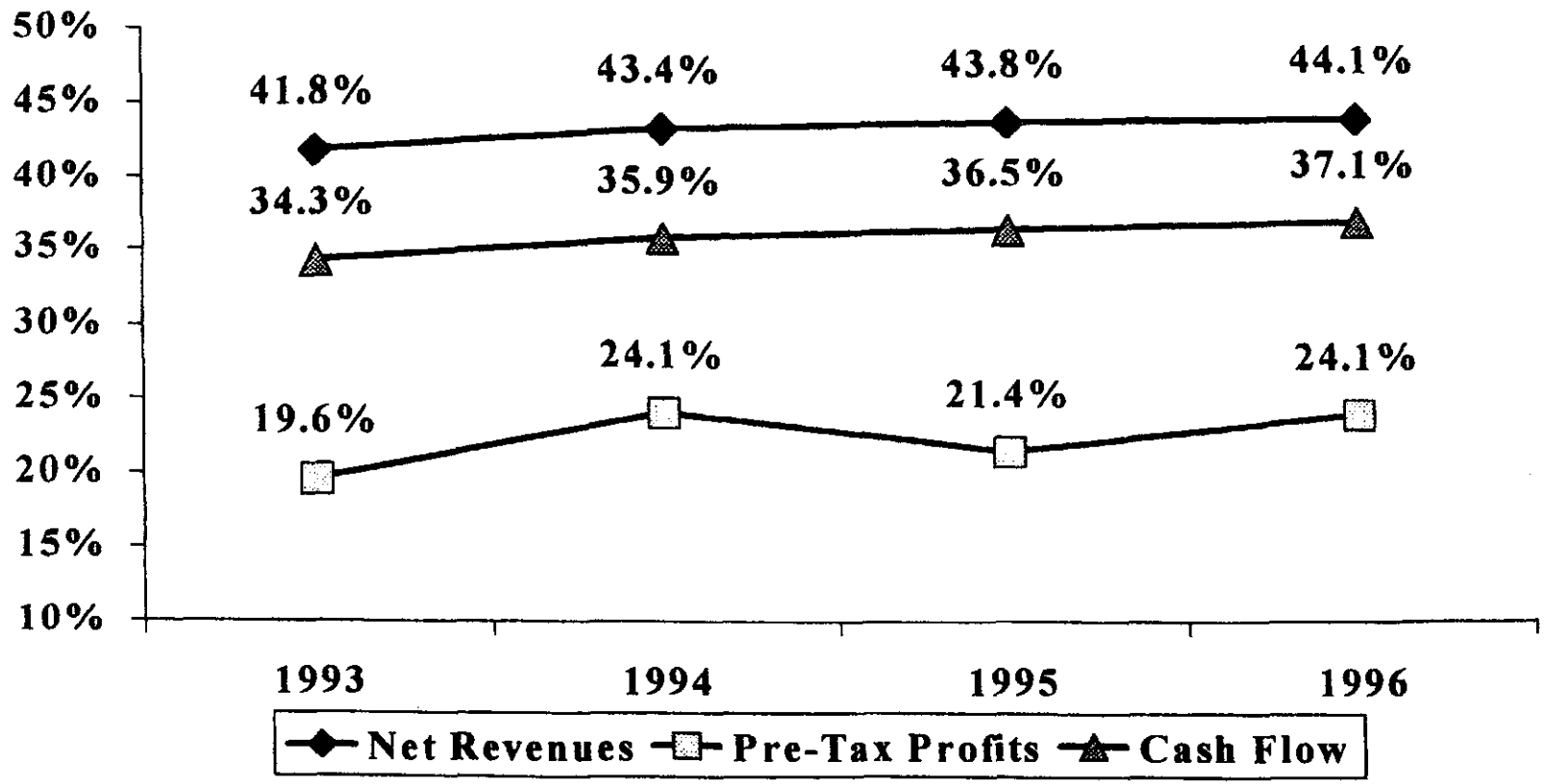
Figure 1
UHF Affiliates* Performance
as a Percentage of VHF Affiliates*



*Includes ABC, CBS, Fox & NBC affiliates

Source: 1994 - 1997 NAB/BCFM Television Financial Surveys.

Market Size Comparison

This disadvantage is evident when examined on a market size basis. Figure 2 shows the same comparative values for four market size groupings for 1996. What is particularly noticeable is that the disadvantage becomes less pronounced when you examine the smaller markets. In fact, in the smallest markets, DMA rankings 101 and above, the UHF affiliate generates only 20.3% less in revenues, 30.0% less in cash flow, and 32.7% less in pre-tax profits.

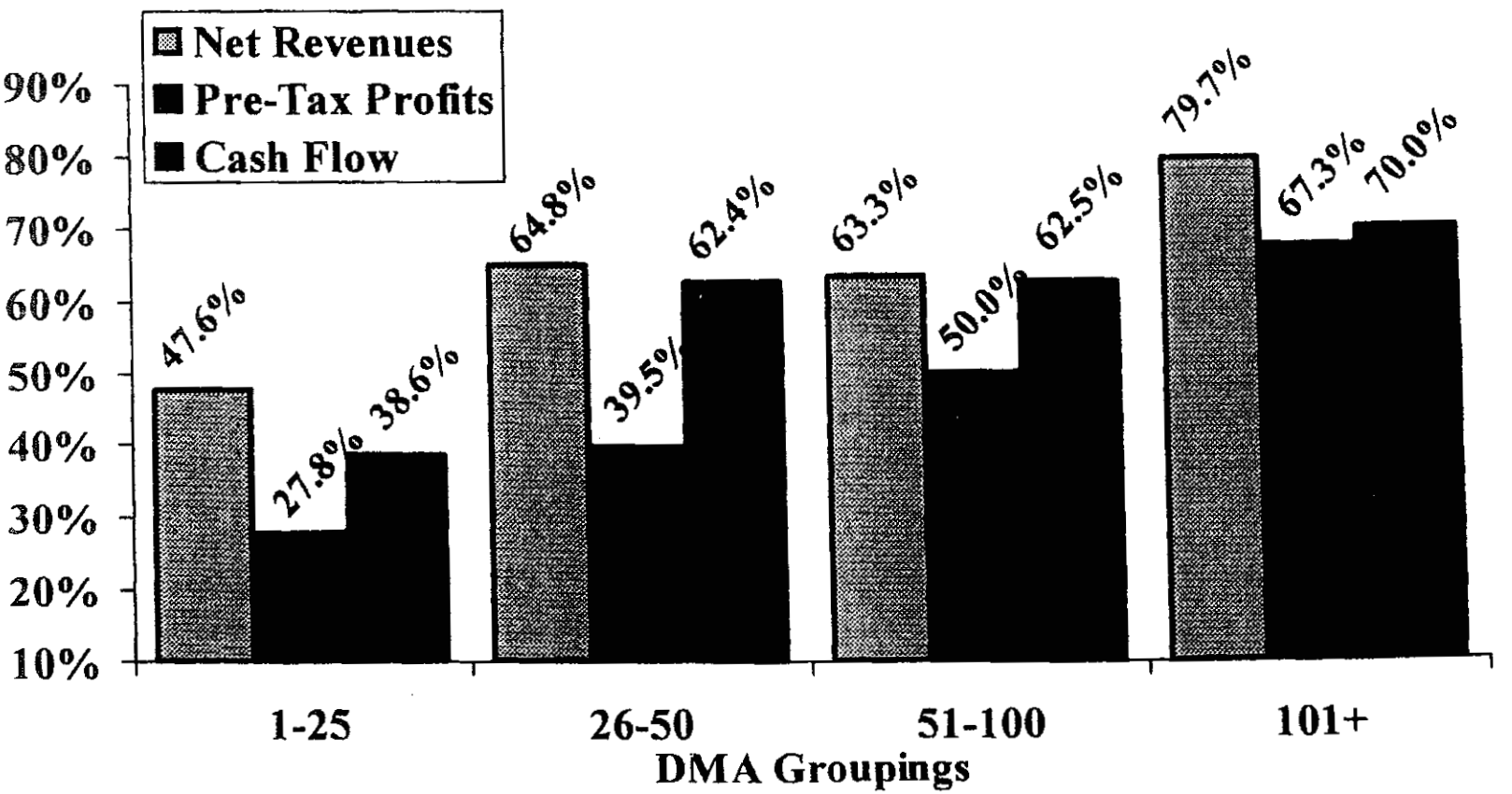
Affiliate Type Comparison

The final comparison is with the different affiliate types. Figure 3 shows the comparative values for the four major affiliate types for 1996. All comparisons reinforce the UHF disadvantage, though to vastly different degrees. In fact, the average UHF CBS affiliate actually generated a loss while the average VHF affiliate generated positive pre-tax profits. On the other hand, the average UHF CBS affiliate came closest to their VHF counterpart in terms of net revenues, generating nearly 50% of that value.

Conclusion

By examining the relative values for UHF and VHF affiliates nationally for the past four years, by market sizes and by networks, one only can conclude that UHF stations fared worse than their VHF counterparts. While in some cases (e.g., UHF stations in the smallest markets) that poorer performance is small, in all cases by examining several financial indicators (net revenues, pre-tax profits and cash flows) UHF stations still face a disadvantage.

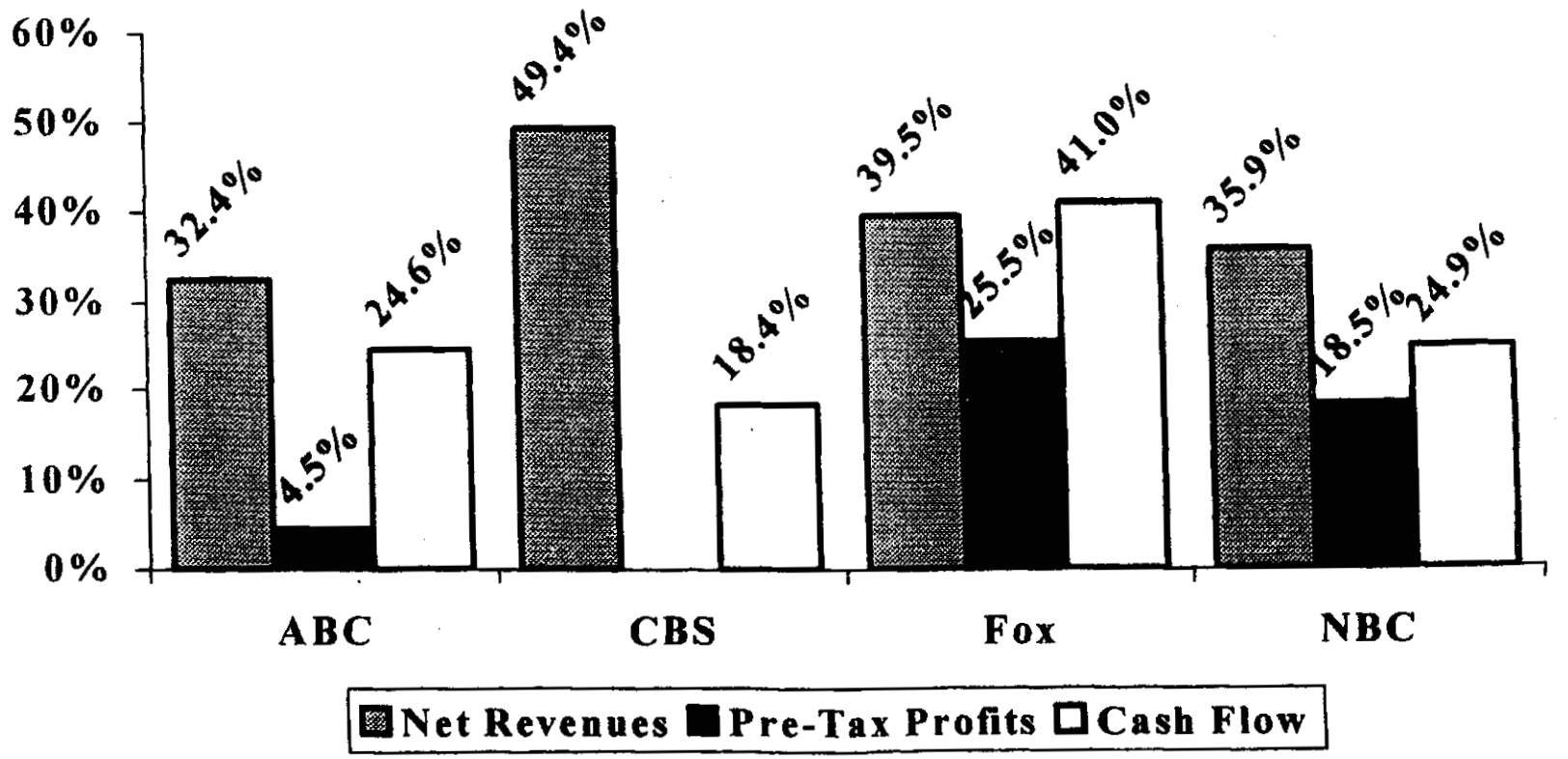
Figure 2
UHF Affiliates* Performance as a Percentage of VHF Affiliates* By Market Size in 1996



* Includes ABC, CBS, Fox & NBC affiliates

Source: 1994 - 1997 NAB/BCFM Television Financial Surveys.

Figure 3
UHF Affiliates Performance as a Percentage of VHF Affiliates By Affiliation Type in 1996



Source: 1994 - 1997 NAB/BCFM Television Financial Surveys.

ATTACHMENT

C

Reply Comments of Paxson Communications Corporation, MM Docket No. 98-35, pp. 2-27, filed August 21, 1998.

I. INTRODUCTION.

The same rationale which supported adoption of the UHF discount in 1985 warrants retaining the discount as the television industry moves toward the 21st century. UHF stations remain at a serious technical and competitive disadvantage to VHF stations. In its *Notice of Inquiry*, the Commission questions whether "improved television receiver designs, as well as the fact that many households receive broadcast channels via cable rather than by over-the-air transmission" have "corrected" the UHF/VHF disparity and therefore warrant eliminating the discount.[2/] As shown herein, although advances in receiver technology and mandatory cable carriage have allowed UHF stations to improve economically, the physical disparity between UHF and VHF television signals remains and still places UHF stations at a disadvantage vis-a-vis their VHF competitors. The Commission's suggestion that the conversion to digital television will further "equalize" UHF and VHF stations' signal reach is inaccurate. The Commission has continued the disparity by limiting the DTV power granted to UHF television stations. Accordingly, the UHF discount must remain intact to ensure UHF stations' continued ability to compete effectively in the DTV world.

Retaining the discount also will be critical to the development of new broadcast networks. Although the three largest broadcast networks -- ABC, CBS, and NBC -- own a small fraction of their affiliates,[3/] they are becoming economically unfeasible, and a new broadcast network utilizing UHF stations and subsequently lower power digital television

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[2/] *Id.* ¶¶ 26, 27.

[3/] ABC owns 10 of its 193 affiliates, CBS owns 14 of 210 affiliates and NBC owns 11 of its 214 affiliates. *See* sources cited *infra* notes 40-41; <ABC, http://www.abc.com/local stations/>; *Broadcasting & Cable Yearbook 1998* at F-77-83.

stations will be unable to succeed in the long term unless it owns its network distribution system. Paxson is well-acquainted with the challenges of establishing a new broadcast network. In less than two months (on August 31, 1998), Paxson will launch the seventh broadcast network, PAXTV, which will air a seven day a week schedule of family-oriented programming to communities across the United States. PAXTV will compete with the six existing networks for advertisers and viewers, enhancing the level of competition and diversity among the broadcast networks as well as cable networks. The UHF discount has enabled Paxson to acquire a significant number of UHF stations that will serve as its new network's primary distribution system. Absent the UHF discount, however, Paxson's ownership of a majority of its distribution would not be possible, and the PAXTV network would not exist.

In addition to retaining the UHF discount, the Commission should increase to 40% the national audience share cap on television station ownership. An increase by only 5% would not adversely impact competition or diversity at the national level and would provide important economic benefits for emerging networks.

Paxson also urges the Commission to relax the television ownership rule in one small but strategic way.[4/] As Paxson has asserted in its comments in related rulemakings, the increasingly competitive and diverse nature of the television industry warrants changes in the rule. The Commission should modify the ownership rule to permit common ownership of television stations in separate Designated Market Areas, as defined by A.C. Nielsen, irrespective of contour overlap. Use of these separate, defined markets to determine

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4/ 47 C.F.R. § 73.3555(b)(1998).

permissible ownership would reflect far more accurately the economic realities of television service and competition than the current Grade B contour overlap standard.

II. THE UHF DISCOUNT.

A. Background.

Since 1985, the Commission's UHF discount rule has fostered the economic development of UHF television stations. In December of 1985 there were 365 UHF commercial television stations operating in this country.[5/] Since that time, the number has grown to 652, a 42% increase.[6/] The FCC adopted the UHF discount in connection with its overall review of the national television ownership rule which at that time provided that an entity could own up to 12 television stations nationwide so long as the stations' aggregate audience reach did not exceed 25% of television households in the U.S.[7/] The Commission applied and continues to apply the UHF discount to determine compliance with the audience limit cap, now 35% of total U.S. television households.[8/] In calculating a UHF station's audience reach, the Commission attributes to that station only 50% of the audience in its market whereas a VHF station is attributed with 100% of the audience in its market.[9/]

5/ *Broadcasting Cablecasting Yearbook 1985* at A-2.

6/ *Broadcast Station Totals as of May 31, 1998, News Release* (rel. June 19, 1998).

7/ *See Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Memorandum Opinion and Order*, Gen. Docket No. 83-1009, 100 FCC 2d 74 (1985) ("*1985 MO&O*").

8/ 47 C.F.R. § 73.3555(e).

9/ *Id.*

As the Commission stated in its *1985 MO&O*, the UHF discount's underlying purpose was to address the technical disparity between UHF and VHF stations. It was well-established at that time, and still is, that UHF station signal strength declines more rapidly over distance than VHF station signal strength. Because UHF stations by their very nature are unable to reach as many viewers as VHF stations, the Commission found that the technical disparity created a significant economic disparity, reducing competition among VHF and UHF stations and adversely impacting diversity. The UHF discount, thus, was designed to level the television playing field so that UHF stations would be in a much stronger position to compete with VHF stations. Nothing has changed since that time to establish equality of coverage between UHF and VHF stations.

B. The Same Rationale Underlying Adoption of the UHF Discount Warrants Retaining the Discount.

The disparities between UHF and VHF stations that existed in 1985 have not changed over the last 13 years. Although economically, due largely to changes in receiver technology and mandatory cable carriage, UHF stations are in an improved competitive position, the playing field vis-a-vis VHF stations remains uneven. Moreover, the cost of operating a UHF station continues to exceed the cost of operating a VHF station. In addition, it is too early in the digital television transition to predict its impact on the traditional UHF/VHF disparity. These circumstances warrant retaining the UHF discount.

1. Changes in Technology and Cable Carriage Have Not Created a Level Playing Field Among UHF and VHF Stations.

The last 15 to 20 years have witnessed dramatic changes in the television industry that have benefitted UHF stations. There have been significant advances in television receiver

technology making it easier for viewers to receive UHF signals over the air.[10/] In 1997, the United States Supreme Court upheld the constitutionality of the FCC's mandatory cable carriage rules.[11/] Those rules,[12/] adopted by the FCC pursuant to the Cable Television Consumer Protection and Competition Act of 1992,[13/] established the rights of television stations to mandatory carriage on cable systems within their television market. These rights have been critical to ensuring that UHF stations could reach via cable viewers who could not receive UHF station signals over the air especially in larger cities with large multi-family dwellings.

Unfortunately, receiver technology and mandatory carriage have not completely solved the basic disparity between UHF and VHF television stations -- the difference in over-the-air signal strength. The fact remains that UHF stations, based on technical disparity alone, do not reach as many viewers with an over-the-air signal as VHF stations. Although an improved television receiver may make it easier for a viewer to receive a UHF station's signal, receiver technology does not and cannot enhance signal strength nor can it overcome the topographic conditions that substantially weaken a UHF station's signal but have a minimal impact on VHF signal transmissions. It is well-established that the inherent propagation characteristics of a UHF channel make its signal transmissions far more

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10/ *Notice of Inquiry* ¶ 26; *Broadcast Television National Ownership Rules, Notice of Proposed Rule Making*, MM Docket Nos. 96-222, 91-221, 87-8, 11 FCC Rcd 19949, 19954 ¶ 12 (1996).

11/ *Turner Broadcasting System, Inc. v. FCC*, 117 S.Ct. 1174 (1997).

12/ *See* 47 C.F.R. §§ 76.51-76.70.

13/ Pub.L.No. 102-385, 106 Stat. 1460 (1992).

susceptible to terrain obstructions than VHF signals. VHF signals more easily can "bend" to accommodate terrain factors than can UHF signals. There is accordingly, an inherent technical handicap that cannot be corrected with receiver technology. These disparities are evidenced by the following Grade B coverage comparison of certain Paxson stations to VHF stations in the same market.

	Paxson coverage as percent of VHF Stations
Boston, MA	27%
San Francisco, CA	54%
Philadelphia, PA	57%
Washington, DC	62%

Similarly, mandatory cable carriage does not resolve the problem of how a UHF station reaches viewers who do not subscribe to cable. Cable penetration has increased over the past 13 years,[14/] but there remains a substantial number of television households that do not subscribe to cable. Indeed, cable penetration in the United States in 1997 was only 65%.[15/] In the five largest Designated Market Areas ("DMA") in the United States, as defined by A.C. Nielsen, cable penetration is less than or barely exceeds 75%. Cable penetration in the New York, New York DMA is 71%, and in the Los Angeles, California

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[14/] In 1985, cable penetration in the U.S. was 43.7% of U.S. households. *Broadcasting Cablecasting Yearbook 1985* at D-3. Cable penetration increased to 57.1% in 1990. *The Broadcasting Yearbook 1990* at D-3.

[15/] *Broadcasting & Cable Yearbook 1998* at xxxi.

DMA is 63%.[16] The Chicago, Illinois DMA has a cable penetration of 62%, and the Philadelphia, Pennsylvania DMA has a cable penetration of 76%.[17] The San Francisco, California DMA has a cable penetration rate of 71%.[18] Thus, in these five largest markets alone, approximately 25% or more of the television households do not receive cable. Moreover, a significant percentage -- 55% -- of total television viewing in United States cable homes is on non-cable connected television sets. In cable homes, there are, on average, 2.6 television sets but only 1.4 are connected to cable.

In sum, notwithstanding must-carry and the expansion of cable, 30% to 35% of U.S. households still do not have cable. Because of their inferior signal strength, UHF stations are seriously handicapped in their ability to deliver a viewable signal to these non-cable viewers. Accordingly, neither cable penetration nor cable carriage of broadcast signals provides any justification whatsoever for the Commission's suggestion that the UHF handicap no longer exists.

2. *UHF Stations Continue to Operate at an Economic Disadvantage When Compared to VHF Stations.*

As the technical disparity between UHF and VHF stations has continued, so has the economic disparity. Given their weaker signal strength and inability to reach as many viewers as VHF stations, UHF stations simply do not garner the same revenues or audience share ratings as their VHF competitors. Moreover, the costs of operating a UHF station

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[16] *Id.* at C-8.

[17] *Id.*

[18] *Id.*

remain high, exceeding the costs incurred by VHF stations, and placing an additional economic burden on the owners of UHF stations.

The Comments submitted by the National Association for Broadcasters ("NAB") in this proceeding provide persuasive evidence that a "UHF penalty" continues to exist. As outlined in Stephen E. Everett's report, "The 'UHF Penalty' Demonstrated," VHF network affiliates on average receive higher ratings than UHF network affiliates.[19/] For instance, VHF affiliates in all of A.C. Nielsen's DMAs averaged a 9.6 prime-time rating while UHF affiliates in the same markets averaged only a 6.4 rating.[20/] ABC's VHF affiliates averaged a 9.4 prime-time rating in 1997 whereas their UHF counterparts only averaged a 6.8 rating.[21/] Similarly, NBC's VHF affiliates averaged a 9.5 rating whereas NBC's UHF affiliates averaged only a 7.4 rating.[22/] The differences also are consistent across all markets. In the 25 largest DMAs, VHF affiliates earned an average 9.9 rating whereas UHF affiliates averaged only a 6.2 rating.[23/] In DMAs ranked 51-100, VHF affiliates garnered an average rating of 9.5 whereas UHF affiliates garnered an average rating of 6.2.[24/]

Financially, VHF stations also outperform UHF stations. As reported in the

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[19/] Stephen E. Everett, Ph.D., "The 'UHF Penalty' Demonstrated," *submitted with* the Comments of the National Association for Broadcasters, MM Docket No. 98-35, July 21, 1998, at 1 ("Everett Study").

[20/] *Id.* This information is based on data compiled by A.C. Nielsen in November 1997. *Id.*

[21/] *Id.* at 2.

[22/] *Id.*

[23/] *Id.* at 3.

[24/] *Id.*

Comments of NAB,

> [g]iven their inherent coverage disadvantages, UHF stations tend to attract smaller audiences than for their VHF counterparts, for the same programming. With these smaller audiences, it easily follows that advertising revenues, pre-tax profits and cash flows should be lower than comparative VHF stations.[25/]

The Fratrik Study submitted by NAB demonstrates that from 1993 through 1996, UHF network affiliates[26/] generated 41.8% to 44.1% of the net revenues, 34.3% to 37.1% of the cash flow, and 19.6% to 24.1% of the pre-tax profits that were generated by VHF affiliates.[27/] (THIS IS A 75% DISPARITY.) The disparity between UHF and VHF economic performance also is demonstrated by an analysis of net revenues, pre-tax profits and cash flow by affiliate type. For instance, in 1996, ABC's UHF affiliates generated only 32.4% of the net revenues, 4.5% of the pre-tax profits, and 24.6% of the cash flow that was generated by ABC's VHF affiliates.[28/] (AGAIN, THIS IS A 75% DISPARITY.) UHF stations affiliated with the Fox network in 1996 earned only 39.5% of the net revenues, 25.5% of the pre-tax profits, and 41.0% of the cash flow generated by VHF stations affiliated with the same network.[29/] (THIS IS A 60% DISPARITY.) Thus, even within the larger networks, there is a greater than 50% disparity between UHF and VHF stations.

[25/] Mark R. Fratrik, Ph.D., "A Financial Analysis of the UHF Handicap," *submitted with* the Comments of NAB, MM Docket No. 98-35, July 21, 1998, at 1 (citations omitted) ("Fratrik Study").

[26/] ABC, CBS, Fox and NBC affiliates.

[27/] *Id.* at 2, Figure 1.

[28/] *Id.* at 5, Figure 3.

[29/] *Id.*

Relevant to the disparities in financial performance, of course, is the dramatic difference in the cost of operating a VHF station as opposed to a UHF station. Included in Exhibit A hereto is a chart outlining the costs of electricity for UHF and VHF stations based on channel, maximum effective radiated power ("ERP"), and transmitter power output, and the costs of transmission equipment. Again, the figures tell the story. Because a UHF station, by its very nature, must operate at higher power than a VHF station, and because the higher power requires more electricity and a more powerful transmitter, the costs of operating a UHF station are significantly higher. Electricity costs alone for a UHF station are almost three times the cost of powering a low VHF station and one and one-half times the cost of powering a high VHF station. Equipment costs are similarly high. A transmitter for a UHF station is likely to cost approximately $1,250,000. A low channel VHF station need only expend $400,000 for a transmitter.

In sum, the economic disparities between UHF and VHF stations continue and the evidence demonstrates that the economic disadvantages suffered by UHF stations are a direct result of the UHF band's technical shortcomings.[30/] Because the playing field between UHF

[30/] Not surprisingly, given these statistics, the industry continues to view a UHF station as providing an inferior signal. One has only to review Fox's successful attempt in 1994 to affiliate with an increased number of VHF stations, resulting in a termination of affiliation agreements with UHF stations, to discern the industry's position. *See* Julie A. Zier, *Fog of war engulfs affiliation battles; affiliation of television stations with networks*, BROADCASTING & CABLE, Dec. 5, 1994, at 50 (describing the Fox network's "upgrades" to VHFs in 16 markets and the three major networks' "downgrades" to UHFs in 19 markets); Geoffrey Foisie, *Figuring the pluses, minuses of Fox-New World; Fox Television's affiliation agreement with New World Communications Group Inc.*, BROADCASTING & CABLE, May 30, 1994, at 10 (noting that Fox's affiliation with VHF stations will force one of the other three networks to "suffer from the inferior coverage of a UHF affiliate").

and VHF stations remains substantially unbalanced, the Commission must retain the UHF discount.

3. *The Implementation of Digital Television Will Not Eliminate the Disparity Between UHF and VHF Stations.*

The Commission's suggestion in the *Notice of Inquiry* that the full transition to digital television ("DTV") will eliminate the need for the UHF discount[31/] is inaccurate and premature at best and cannot support any change in the rule. It is impossible to predict at this time whether the conversion to digital television will alleviate the historic UHF/VHF disparity; indeed, in comparing the power levels assigned to VHF stations operating on UHF digital channels with those assigned to UHF stations operating on UHF digital channels, it is clear that the UHF/VHF technical disparity will exist notwithstanding the conversion to DTV.

Set forth below is a chart illustrating the DTV power levels assigned to certain of Paxson's UHF stations and those assigned to VHF stations that will operate on digital UHF channels in the same markets. The disparities in power level confirm that a substantial number of UHF stations, even in the DTV world, will suffer from technical signal

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31/ *Notice of Inquiry* ¶ 27.

deficiencies far in excess of 50%.

Market	PAXSON DTV Channel	PAXSON Power	V-U Channel	V-U Power	Disparity
New York, NY	30	**104**	28	**164**	**37%**
Los Angeles	38	**210**	36	**711**	**70.5%**
Philadelphia	31	**50**	26	**1000**	**95%**
Washington, DC	43	**69**	39	**1000**	**93%**
Dallas, TX	42	**106**	35	**1000**	**89%**
Seattle, WA	32	**50**	38	**1000**	**95%**

Adding to the uncertainty is the outstanding question of what if any mandatory cable carriage rights DTV stations will have. Until the industry and the Commission have more experience with this new technology, and specifically UHF station coverage vis-a-vis VHF station coverage as well as mandatory carriage rights, the Commission would be ill-advised to base any change in its ownership rules on the possibilities of DTV technology.

a. The FCC's DTV Rules Do Not Place UHF Stations on an Even Par with VHF Stations.

The implementation of DTV will not result in the "equalization" of UHF and VHF coverage areas. First, until the DTV transition is completed, it will be impossible for the FCC to determine whether UHF and VHF analog stations operating on a digital channel will have the same coverage. Although it is true that the majority of stations, whether currently operating on UHF or VHF channels, will operate in the UHF band, until stations are

operating with their authorized DTV facilities and this new technology is fully implemented, neither the FCC nor the industry is in a position to evaluate UHF and VHF station coverage.

Second, as evidenced by the power levels listed in the chart above, the FCC's DTV rules are not designed to eliminate the technical disparity between UHF and VHF television stations. Instead, the FCC's DTV allotment scheme is based primarily on replication of existing analog service.[32]

> We continue to believe that our service replication proposal, with some modifications, is the appropriate approach for implementation of DTV. We believe that providing DTV allotments that replicate the service areas of existing stations offers important benefits for both viewers and broadcasters. This approach will ensure that broadcasters have the ability to reach the audiences that they now serve and that viewers have access to the stations that they can now receive over-the-air.[33]

The Commission has recognized that replication of existing UHF station service areas will not equalize VHF and UHF coverage areas. On reconsideration of the *Sixth Report and Order*, the Commission acknowledged "the difficulties that UHF stations may face under the current service replication plan . . . in competing with the higher-powered DTV service of existing VHF stations."[34] The Commission concluded that additional measures were necessary to reduce the disparities "inherent in the current service replication process."[35]

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[32] *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Sixth Report and Order*, MM Docket No. 87-268, 12 FCC Rcd 14588, 14605, ¶ 29 (1997) ("*Sixth Report and Order*"), *on reconsideration, Memorandum Opinion and Order on Reconsideration of The Sixth Report and Order*, MM Docket No. 87-268, 13 FCC Rcd 7418 (1998) ("*Sixth DTV Reconsideration*"), *appeal pending*.

[33] *Sixth Report and Order*, 12 FCC Rcd at 14605, ¶ 29 (emphasis added).

[34] *Sixth DTV Reconsideration*, 13 FCC Rcd at 7450, ¶ 79.

[35] *Id.*

Accordingly, the Commission modified its DTV rules to permit UHF stations to maximize their DTV coverage and service through power increases and use of beam tilting techniques.[36/] There is no guarantee, however, while DTV is still in the early stages, that all UHF stations will be able to take advantage of these opportunities or that in increasing power or using beam tilting techniques, the result will be a maximization of UHF service that is equivalent to VHF station coverage. In short, until UHF DTV stations' coverage can be fully assessed based on real-world experience, there is no basis for the Commission to conclude that the UHF discount would not be necessary to ensure UHF/VHF parity.

b. Mandatory Cable Carriage Is a Virtual Unknown in the DTV Era.

As noted above, mandatory cable carriage of broadcast stations has been critical to the improved economic status of UHF stations in recent years. Cable carriage of DTV signals, however, has yet to be resolved and it is not at all clear what the resolution will be. This ongoing uncertainty is an additional factor that weighs against making any changes to the UHF discount.

To say that digital must-carry is controversial is a gross understatement. The Commission's much-anticipated *Notice of Proposed Rule Making* on digital must-carry was only recently released on July 10, 1998.[37/] The issues raised in the *Must-Carry Notice* are both numerous and complex and include carriage of analog and digital signals during the DTV transition period, compatibility and carriage of multiple digital formats, picture quality

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[36/] *Id.* ¶¶ 79-85.

[37/] *Carriage of the Transmissions of Digital Television Broadcast Stations Amendments to Part 76 of the Commission's Rules, Notice of Proposed Rule Making*, CS Docket No. 98-120, FCC 98-153 (rel. July 10, 1998) (the "*Must-Carry Notice*").

standards, and carriage of broadcasters' ancillary services included in the digital broadcast signal. The broadcast and cable industries are sharply divided over these issues,[38] and indeed the Commission's *Must-Carry Notice* poses far more questions than solutions.

What is clear is that "must-carry" of DTV signals will take some time to resolve. The Commission cannot simply assume that mandatory cable carriage of UHF stations' DTV signals will alleviate UHF signal disparities vis-a-vis VHF stations. The must-carry factor in the transition to DTV accordingly provides no basis for any changes in the UHF discount.

C. *The UHF Discount is Critical to the Development of New Broadcast Networks.*

As demonstrated by Paxson's own experience, the UHF discount is essential to the creation and successful development of new broadcast networks. On August 31, 1998, Paxson will launch a new broadcast network, PAXTV, the nation's seventh largest broadcast network. The long-term success of PAXTV will depend to a significant extent on its ability to distribute economically high quality programming to as many viewers as possible. No network can afford to pay affiliate fees and live off the income from network spot revenues only. Financial stability leading to increased network expenditures for original program fare can only come through owning as many distribution outlets as possible and enjoying the revenues from network spot, national spot and local ad sales. Absent the UHF discount, however, Paxson would be prohibited from owning all of its stations under the national ownership rule. And, absent ownership of its primary distribution system, Paxson would not attempt the launch of a new network.

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[38] *See* Chris McConnell and Price Colman, *FCC tackles digital must-carry*, BROADCASTING & CABLE, July 13, 1998, at 8-9.

1. *PAXTV.*

PAXTV will be the nation's seventh largest broadcast network, providing a unique selection of programming unduplicated by the other networks. The majority of PAXTV programming will consist of one-hour drama, situation comedy, talk and information programs and movies, and will be family-oriented, focussing on family values and issues of broad interest. The PAXTV programming will have no senseless violence, no foul language and no explicit sex. Although many of these programs have aired or will air on other broadcast networks, PAXTV will be the first broadcast network to package the programs together with a family focus. Among the leading programs that will be featured on PAXTV are *Touched By An Angel, Promised Land, Dr. Quinn, Medicine Woman, Diagnosis Murder, Highway to Heaven,* and *Life Goes On*. Additional programs to be aired on the network include *I'll Fly Away, Dave's World, Christy, The Father Dowling Mystery Series, Love Boat, and Seventh Heaven*. PAXTV will have 15 hours of original fare a week, more than any other new network, and the shows will include *Little Men, The New Flipper, Neon Rider, It's A Miracle, Great Day, Women's Day* and two hours a week of children's educational programming.

2. *Paxson's UHF Television Stations Are Critical to the Successful Launch of PAXTV.*

Paxson and the new PAXTV network are the new economic paradigm for the future world of fractionalized television audiences. Paxson's strategy for the launch and growth of PAXTV establishes the new broadcast network organization. The traditional networks --

ABC, CBS and NBC -- own only a small fraction of their affiliates.[39/] The majority of their affiliates are separately-owned, operate independently of the network, and receive compensation from the network. The increasing level of competition for affiliates in the television industry, however, makes it clear that any new network must have a more established and controlled distribution system from its very inception. In order to compete successfully with ABC, CBS and NBC, as well as the newer networks, Fox, UPN and WB, and numerous cable television program services, a new broadcast network must be able to rely on a significant number of owned stations to reach viewers, to attract advertisers and to enjoy all levels of ad revenue (national, network and local).

As evidenced by the numerous affiliation switches that have taken place over the past few years, the competition among ABC, CBS, NBC and Fox for broadcast network affiliates, particularly those operating on VHF channels, is fierce.[40/] The stakes increased with the launch of the UPN and WB networks in 1995 as they vied (and continue to vie) with each other and the four larger networks for affiliates.[41/] In the face of this level of competition, Paxson has found that its chances of successfully launching a new network are substantially increased if it owns the majority of its network distribution. Paxson currently owns 49 television stations nationwide, and after the completion of pending acquisitions and

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[39/] *Broadcasting & Cable Yearbook 1998, supra* note 2.

[40/] *See supra* note 27.

[41/] *See* David Tobenkin, *New players get ready to roll; UPN, WB Network prepare to take their shots*, BROADCASTING & CABLE, Jan. 2, 1995, at 30; Cynthia Littleton, *WB, UPN rally the troops*, BROADCASTING & CABLE, June 10, 1996, at 20 (describing "fierce" competition between WB and UPN for affiliates); Lynette Rice, *Round three: UPN vs. The WB; competition to become the winning fifth network*, BROADCASTING & CABLE, Aug. 26, 1996, at 5.

transactions, will own a total of 69 stations nationwide. The majority of these stations are newly-constructed UHF stations or under performing UHF stations acquired by Paxson over the last four years. Over the past two years alone, Paxson has constructed 17 full power UHF stations, and has substantially rebuilt the technical facilities of approximately 20 more full power UHF stations. Paxson has infused these stations with capital, improved technical facilities and now with improved programming and will use these stations as its primary distribution system for the launch of PAXTV.[42] Absent the UHF discount, however, Paxson would be prohibited from owning this number of stations and would not have as great an incentive to launch its new network.[43]

Paxson's acquisition and use of UHF stations to "grow" its network are consistent with the role UHF stations have played in the development of new broadcast networks historically. Although the majority of the ABC, CBS and NBC network affiliates are VHF stations, the majority of the other three networks' affiliates are UHF stations. For instance, NBC has 153 VHF affiliates and only 61 UHF affiliates.[44] CBS has 174 VHF affiliates and only 36 UHF affiliates.[45] Fox, UPN and WB, however, have relied to a far greater extent on UHF stations to distribute new network programming. For example, UPN has 27 VHF

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[42] PAXTV will also be entering into affiliation agreements with non-Paxson owned stations and cable systems.

[43] The stations' aggregate audience reach exceeds 50% of U.S. television households not taking into account the UHF discount. Applying the UHF discount, Paxson's stations' are attributed with only 33.77% of U.S. television households.

[44] NBC, <http://www.nbc.com/stations>

[45] CBS, <http://www.cbs.com/navbar/affiliates.html>

affiliates and 129 UHF affiliates.[46] Similarly, Fox has 132 UHF affiliates and 41 VHF affiliates.[47] The PAXTV distribution system operates in the UHF band and all of its affiliates (which total 15) are UHF except for two.

3. *Retaining the UHF Discount Ultimately Serves the Commission's Diversity and Competition Goals.*

By retaining the UHF discount, the Commission also will encourage the development of new broadcast networks like PAXTV, ultimately resulting in increased diversity and competition. It is undisputed that the development of the Fox, UPN and WB networks has contributed to competition among the networks and the diversity of network programming. Each of these new networks has proven to be an effective competitor to the three traditional networks -- ABC, CBS and NBC. For example, Fox has increased the level of competition among the networks for the rights to air professional sports programming. Both UPN and WB have increased the hours, types and quality of programming available to viewers today.[48]

PAXTV will be an effective seventh competitor to the six existing broadcast networks. Its programming, when launched, airs seven days a week and is designed to appeal to a broad viewership but has a relatively narrow focus on family and values-oriented programming. Its programming is particularly responsive to governmental and societal

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[46] UPN, <http://www.upn.com/aboutsite/affiliates.html>

[47] Twentieth Century Fox, <http://www.foxworld.com/usaff.html#al>

[48] *See* Michael Stroud, *Valentine vows improvement; United Paramount Network,* BROADCASTING & CABLE, June 15, 1998, at 45 (discussing UPN's efforts to target various demographic groups); Michael Stroud, *WB tops UPN season to date, Warner Brothers,* BROADCASTING & CABLE, Feb. 23, 1998, at 41 (discussing WB's programming designed to reach teenage audiences).

concerns that today's television programming is characterized more by sex and violence than family values. In developing this family-oriented package of programming, PAXTV will provide a unique alternative for both advertisers and viewers. And, through ownership of its primary distribution system, its UHF stations, Paxson can ensure that this unique alternative not only has present staying power among advertisers and viewers but also has the distribution base necessary to grow and develop into a full-fledged network. The total economics of the ownership of the network's distribution (national, network and local) will be the basic factor allowing PAXTV to offer competitive programming.

Retaining the UHF discount also will provide added incentive for future broadcast networks. Like Paxson, an entity contemplating the launch of a network must have a strong incentive to network its programming. It can only do so if it is permitted to own a significant amount of its television distribution. The UHF discount in part will keep open the door for future broadcast networks to develop a network organization in a similar manner, thus further enhancing the level of diversity and competition among program networks.

D. Existing Ownership Interests Should Be Grandfathered in the Event the Commission Limits or Eliminates the UHF Discount.

As demonstrated above, there is no basis for the Commission to eliminate or narrow the scope of the UHF discount. However, should the FCC decide to take such action, Paxson urges the Commission to grandfather all ownership interests existing at the time of its decision which would not comply with the national ownership rule absent the UHF discount. Grandfathering of existing ownership interests not only would be the fairest solution but also would be consistent with established precedent.